

Indiana Board of Special Education Appeals



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BEFORE THE INDIANA BOARD OF SPECIAL EDUCATION APPEALS

In the Matter of T.K. and the Valparaiso)
Community Schools and Porter County) **Article 7 Hearing No. 1092.99**
Educational Interlocal)

PROCEDURAL HISTORY OF THE DUE PROCESS HEARING

“Parent” shall refer to the parent or parents of the Student. It should also be noted that Valparaiso Community Schools and Porter County Educational Interlocal will be referred to collectively as the “school” or “respondent.”

The parent initiated the request for a hearing in this matter on March 11, 1999, identifying the issues as stay-put and whether the Student’s misconduct was a manifestation of her disability. An Independent Hearing Officer (IHO) was appointed on March 17, 1999. The record documents requests for extensions of time and the granting thereof, such that the IHO’s decision was due by March 10, 2000. Prior to the hearing in this matter, the case conference committee (CCC) determined that a causal relationship between the Student’s misconduct and her disability did exist. The IHO clarified the issues for hearing to be:

1. Whether the recommended placement is consistent with the Least Restrictive Environment (LRE).
2. Whether the recommended placement and individualized education program (IEP) have been properly determined and are appropriate under Article 7.
3. Whether respondents have failed to provide a Free and Appropriate Public Education (FAPE):
 - a. in the Student’s first semester English class;
 - b. in the alleged exclusion of the Student from the high school in the Stay-Put placement;
 - c. in the alleged violation of the maximum number of days limit, 511 IAC 7-15-1(b).
4. Whether respondents’ evaluation procedures were appropriate.
5. Whether the Student was eligible for Extended School Year (ESY) services or is now eligible for compensatory education.

The hearing was conducted on July 20, August 6, August 13, August 17, and September 7, 1999. After these first five days of hearing, the IHO determined she lacked sufficient evidence to make an informed decision and ordered an independent educational evaluation (IEE). As a result of this report, the IHO notified the parties she was adding an additional issue of the appropriate eligibility category. Additional days of hearing were held on December 16, 1999, and January 11 & 12, 2000. Following the January 12, 2000, hearing date, on motion of petitioners the IHO reopened evidence, but thereafter closed the evidence. The IHO admitted three additional exhibits into the record post-hearing. The IHO's decision was rendered on March 8, 2000.

The Student was placed into special education programming in her home school as a first grader and identified as a student with an "other health impairment" (OHI) due to her agenesis of the corpus callosum. At the end of her third grade year, the CCC recommended placement in a school other than her home school so she could receive more services in the form of affective education programming and behavioral supports. For middle school, the Student received special services, including affective education, in a self-contained classroom with other special education students. The Student had some difficulties with peers, using profanity, teasing or annoying other students, and touching, kicking or hitting other students. With adults, the Student had difficulty following directives, using inappropriate tones of voice or language, being verbally assaultive, and kicking a paraprofessional.

The Student began attending Valparaiso High School in the fall of 1998. The Student was in special education classes for all subjects except choir and physical education. The CCC of October 21, 1998, reviewed evaluation data from the Student's three-year reevaluation. Adaptive behavior was generally in the average range. Areas of deficit included ability to express opinions and feelings, using verbal skills to maintain positive relationships with others, taking care of personal property, demonstrating appropriate behavior, responding appropriately to friendly teasing or typical physical exchanges with others such as being bumped, interacting appropriately in group situations, accepting criticism and completing assignments with an acceptable level of accuracy during the time provided. The Student continued to demonstrate impulsive behaviors and had shown an inclination to become confrontational with teachers. She performed best in environments where she had a clear understanding of the parameters of behavior. Inconsistency in those parameters could result in a power struggle between the Student and the authority figure.

School staff became concerned in the fall of 1998 when the Student's behaviors began to include threats of physical harm to other students and to staff. Her behaviors in her special education English class had become problematic. The Student sat in the back of the classroom, not participating, wrote notes, and refused to comply with directives. When called upon, she would respond in whispers. The Student responded to consequences by avoidance, profanity and refusals to leave the room. The teacher frequently had to call for back-up to remove the Student from the classroom. These behaviors were happening about weekly in the English classroom. Gradually, the disruptive behaviors began appearing in other classes. The Student demonstrated few coping mechanisms.

The Student received out-of-school suspensions on September 17, 1998 for “giving the finger” to a teacher, and on November 23, 1998, for threatening to kill a teacher. She received a “class supervision” on September 25, November 2, and November 11, 1998 for failing to follow teacher directives; November 19, 1998 for threatening another student; and on January 27, 1999 for failing to follow a directive. (During a “class supervision” the Student goes to the office to finish her day’s work.)

On November 30, 1998, the CCC reviewed the Student’s threats to staff and other students. The CCC developed a behavior intervention plan (BIP) which called for positive reinforcers to increase appropriate behaviors and removal from the school environment if she further threatened students or staff. The BIP had some limited good effect, but teachers continued to report the Student needed a more structured day and that she needed to learn new coping skills, to identify feelings and how to process them, to resist manipulating, and to self-monitor her escalating anxiety level when consequences were given.

The Student had performed well and had few problems in the self-contained math class until February, 1999. On February 10, 1999, another student asked the math teacher for assistance, indicating the Student “was trying to get him.” The Student appeared and tried to engage this student in physical contact. The teacher directed the other student to leave the building, as it was his dismissal period. The Student went after the other student, and the teacher chased after the Student, eventually catching her and taking her to the office. The teacher searched her book bag, as other students had reported the Student had been carrying a knife at school. The teacher did not find a knife. On February 16, 1999, there was a substitute teacher for the math class. The difficulties between the two students continued, both verbally and physically. The substitute teacher told them both to calm down and to stop it. The Student threw the other student’s book bag into the trash and repeatedly pushed her desk into the back of the other student’s chair. The other student pushed Student’s books to the floor. The Student scratched the other student’s neck with a cigar cutter which was approximately 3.5 inches in length. The Student spat on the other student, who possibly spat back.

Between classes, other students reported the Student had used a knife to cut the back of the student’s neck. The police were called and the foldable cigar cutter was found in the Student’s possession. An administrator contacted the Student’s mother and informed her of the incident and that it would likely result in suspension and a recommendation for expulsion. A notice of suspension pending expulsion and a notice of a causal case conference were sent to the parents. The Student was suspended pending the meeting of the CCC. After the February 16 incident, the school was concerned that the Student presented a danger to herself and others, pursuant to 511 IAC 7-15-2(f).

On February 22, 1999, the CCC convened to review the relationship between the Student’s disability and the knife incident. The parents were given a Parent Rights Handbook at this conference, as at each of the CCC meetings. The Parent Rights Handbook had been approved by the Division of Special Education. The Student’s psychologist gave his opinion that the misconduct was a product of the Student’s disability. After a review of the Student’s current levels of performance and the incident itself, members of the CCC expressed concern about the escalation in misconduct and recommended that a psychiatric evaluation be completed as soon as possible. The CCC proposed the Student receive five hours of homebound services weekly to keep her competitive in her classes until the

evaluation could be completed. The CCC offered to reconsider the number of hours if that amount were not sufficient. The parents did not agree to homebound services so they were not started.

The parents insisted through their attorney that the causal case conference take place immediately without the evaluation by a psychiatrist. On March 3, 1999, the causal case conference reconvened. The parents brought a court reporter to record the proceedings. The school refused to permit the court reporter to be present and instead made provision for a tape recording to be made for the parents. The CCC again recommended a psychiatric evaluation, which was refused by the parents. The CCC reviewed the data before it and concluded there was no basis for a finding that the misconduct in the knife incident was caused by the Student's disability, pursuant to 511 IAC 7-12-1(g)(6). The CCC recommended the Student be placed in the STAGES program on an interim basis. The STAGES placement was identified as an interim alternative education placement. The Student began attending the STAGES program on March 9, 1999, when her mother provided consent. The Student was without services from February 17 through March 8, 1999. Prior to the February 16 incident, the Student had been suspended out-of-school on November 24 and 25, 1998 and a half day on February 11, 1999.

The STAGES program operates a very structured classroom for emotionally handicapped (EH) adolescents on a full-day basis within the school's special education learning facility. It allows students to receive subject matter and credits that are required in making progress toward a high school diploma. The STAGES classroom has a classroom management plan with a strong behavioral component. The students generally stay with the same teacher in the same classroom all day.

The parents filed a hearing request on March 11, 1999. STAGES was the stay-put placement in effect when the Article 7 hearing request was filed.

The school wished to have the Student evaluated by Dr. Marvin Schwarz, M.D., J.D., regarding dangerousness. The parents had concerns about the specific evaluator the school wished to use, and resisted. Following argument before the IHO in a teleconference on April 9, 1999, the IHO ordered that the evaluation take place. The parents requested the school notify them a week prior to the evaluation taking place, but for a variety of reasons, the advance notice was not given, nor was a requested tape recording made of the interview.

The Student told Dr. Schwarz that she always carried the cigar cutter for protection; that she was very paranoid; that she knew she could have killed the other student when she scratched him; that she wouldn't have cared if she had killed him; and that she often does things without knowing why she's doing them. She indicated she felt very comfortable at STAGES and the people there didn't "bug" her as people had at the high school.

Dr. Schwarz concluded the Student did not appear to hallucinate; there was a marked paranoid distortion to reality testing; associations were tangential; there was evidence of impulsivity associated with some rage reaction, and the rage was related to her paranoid distortions. He advised that the inability to inhibit emotional responses was caused by the agenesis. "Given the great variances in her behavior, her paranoia, and manipulative behavior along with the length of time she has exhibited

aggressive behaviors and the recent escalation of the level of violence, this examiner has grave concern about her being a threat to others. Further escalation of the more serious types of aggressive behaviors are probable, without a structured environment.” Dr. Schwarz recommended a highly structured setting where behavior could be monitored and controlled throughout the entire school day in a single environment. He recommended a behavior assessment to determine if behaviors had stabilized, whether emotional expression was more appropriate to the circumstances, and whether there was any improvement in her ability to self-monitor. His diagnosis was as follows:

- AXIS I Impulse Control Disorder
- AXIS II Paranoid and Narcissistic Features
- AXIS III Agenesis of the Corpus Callosum without associated anomalies
- AXIS IV Moderate
- AXIS V 45%

Dr. Schwarz’s evaluation provided the first diagnosis of impulse control disorder. The parents were in disagreement with his report and sought an IEE by John C. Courtney, Ph.D., a psychologist. Dr. Courtney’s report yielded the following findings and recommendation: The Student’s condition is a result not only of callosal agenesis but also significant cerebral tissue volume loss, resulting from a hydrocephalic state. Enlargement of the bilateral occipital horns was also noted, which may be a result of an in-utero hypotensive event altogether separate from the etiology of the callosal agenesis. Dr. Courtney’s report states that “...she does not presently demonstrate the common behavioral portrait of a child with Attention Deficit Disorder.” Dr. Courtney advised that the Student is “...more likely to act in an aggressive fashion again if the environmental circumstances are not managed more effectively. Children with brain injury or other similar organic deficits are best served in environments that are more strictly managed via strong behavioral models.” He recommended a more structured and behaviorally focused environment, consistent throughout the day, with a limited number of students and teachers or rehabilitation specialists. For the summer vacation, he recommended the Center for Comprehensive Services (CCS) in Carbondale, Illinois, or another institution with advanced programs in behavior modification for brain-damaged children.

Following these evaluations, the CCC, on June 8, 1999, concluded that the Student’s misconduct was due to her disability. Suspension proceedings were stopped. On the basis of the further information regarding the Student’s worsening behaviors and their connection to her disability, the CCC recommended modifications to the IEP and placement at STAGES for the fall, changing the interim nature of the placement. The parents disagreed with the IEP revisions and recommended placement. The parents also wanted ESY services which were not recommended by the CCC. A general education teacher was present for this CCC, which lasted about eight hours, but left around noon.

At the request of the parents, the Student’s records were also reviewed by Robert M. Shuman, M.D., whose practice in child neurology is associated with Dr. Courtney. By Dr. Shuman’s assessment, the new MRIs evidenced even more serious white matter loss than previously known. He identifies the Student’s condition as colpocephaly. He opined that the Student functions as well as she does by directing functions that would have been performed utilizing the missing part of her brain to the normal forward half of her brain; the Student is neurologically damaged, but can still benefit from an

educational program which combines the use of the normal frontal tissues of her brain and minimalizes the normal burden of coping in a non-supportive environment.

CCS offers a specialized program for brain-damaged children which is unique in its focus and results. At the high school in the self-contained classrooms, students are grouped by skill or ability. There is no classroom at the high school where students remain all day, with continuity of teachers and place. The STAGES program is very successful in teaching certain students who have experienced difficulties in the regular high school. The classroom provides limited stimuli, continuity and stability. The classroom has one teacher and 2-3 behavior modification assistants. Academic programming is tailored to the individual student's needs, and a BIP is in effect for each student. The atmosphere is nurturing. In the spring semester 1999, there were 8-10 other students, all male, in the classroom and three behavior specialists. At least one of these students was known to be sexually active and was described as a potential "sexual perpetrator."

The Student made progress academically while at STAGES and seemed to have benefitted emotionally. The Student received credit for her first semester English (fall 1998) while at STAGES. Some improvement was seen behaviorally, although there were significant ups and downs. The Student responded positively to the Levels system throughout the month of April. Because the Student remained in the back of the classroom and didn't participate, the decision was made to try to involve her in a child development classroom where she would have the opportunity to interact with the same sex and same age peers. Although STAGES personnel attempted to transition the Student, she responded suspiciously and refused to go to the child development classroom. Her repeated refusal to go to the classroom was treated as noncompliance under the Levels system, and as a result, the Student's point level dropped sharply. On May 27, 1999, the Student was swearing at another student. The situation escalated and resulted in the Student spending time in a time-out room and being put into a therapeutic hold on three occasions. After the Student calmed down, she rejoined the group and the rest of the afternoon was uneventful.

After the first five days of hearing, the IHO ordered an IEE by psychologist Julie T. Steck, Ph.D., and school psychologist Nancy Lindhjem, Ed.S., of Children's Resource Group (CRG). This report warned of worsening of the Student's thought disorder. On Dr. Steck's recommendation, projective testing (Rorschach) was administered by Jennifer Horn, Ph.D., another psychologist affiliated with CRG. That testing confirmed psychotic elements in the Student's thought processes. The reports and testimony from CRG strongly recommended psychiatric evaluation of the need for antipsychotic medications. Dr. Steck's report indicated awareness of two medications the Student was on. By the time of Dr. Horn's testing, additional medications were being administered and levels of medication were being changed rapidly. Neither Dr. Horn nor Dr. Steck were informed of these changes. Evidence indicated that Adderrall alone is capable of producing psychosis. Rapid medication change also can produce or enhance psychotic thought processes. The measure of psychosis found by Dr. Horn may also have been affected by the combinations of the medications. The IHO, school, and the CRG evaluators were not made aware of these changes as they were happening. The changes were made on the advice of Drs. Courtney and Shuman.

The parents and the special education personnel at times have had serious communication

issues. Without the continuous availability of a facilitator to focus on improving communication, the Student's education progress will continue to be marked by faulty communication. The parties will need the presence of a facilitator to assist in producing higher-quality communication, even in the CCC process. In the recent past, the school has not been afforded access to the Student's medical, psychiatric or psychological providers, which has hampered efforts to plan for the Student.

On the last day of hearing, the parties agreed to have a full functional behavior assessment done by Dr. Van Acker (Ed.D., Special Education). His report, based on observation of the STAGES classroom, provided measures such as Academic Engaged Time and Social Interaction, and is additional support for the appropriateness of the STAGES classroom.

On the final day of hearing, the parents expressed their intention to consult with a neuro-psychiatrist regarding medications generally and the need for anti-psychotics. The parents did consult with Dr. Fred Ovsiew of the University of Chicago. Dr. Ovsiew observed that the Student's behavior disturbance is crucially related to her brain disease and an ideal placement would be one in which a child with her anomalous pattern of brain function and dysfunction could receive specialized instruction, including attention to her impairment in peer relations and social cognition.

The cigar cutter incident constituted escalation in the level of the Student's aggression beyond what could reasonably be thought controllable by a BIP in the uncontrolled environment of the high school. This incident showed a unilateral escalation to the use of the weapon. In combination with the Student's inability to control impulses and also her disordered thinking, this creates an extremely dangerous situation. The Student continued to show no remorse. The Student's behavior continues on an episodic basis to be physically dangerous and lacking in impulse control. Her actions on occasion are violent or manipulative. The Student's lack of impulse control creates an immediate threat to her own and others' safety. The danger was and is substantial, and is due to the agenesis, other organic brain conditions, and the disordered thinking they produce. The danger will continue to be an important factor in her placement until there is improvement in impulse control, through learned responses or medication. The school had a reasonable apprehension of danger to the Student or others. The CCC decision to place the Student at STAGES in March, 1999, was based upon that reasonable apprehension. The June, 1999, CCC decision to continue the Student at STAGES was based upon a continuation of that reasonable apprehension.

The Student has made academic progress while at STAGES and has benefitted emotionally from the stability. Behaviorally, time spent at STAGES will be more productive when the results of the functional behavioral assessment are available. Problem behaviors at STAGES include manipulation of authority figures, instigating behaviors with other students, suspiciousness which prevents development of relationships that could help her better perceive environmental cues, and lack of impulse control. There has been some improvement in these behaviors while the Student has been at STAGES.

Dr. Steck's recommendation that the Student return to the high school with an aide with her at all times was based upon the premise that the Student's disordered thinking and dangerousness could be controlled through medication. Dr. Courtney and Dr. Shuman advised that the Student be placed at CCS. Dr. Ovsiew refers to an ideal placement as one where the Student could receive specialized instruction, including attention to her impairment in peer relations and social cognition, but he defers to further psychological study for a recommendation as to placement. Dr. Schwarz's and Dr. Van Acker's testimonies support STAGES as an appropriate placement. The school generally supports the possibility of a gradual return to the high school if improvement in behaviors is seen.

In order for this Student to benefit from her education, because of her agensis and other conditions, it is critically important for this Student to be given the opportunity to learn to recognize and control her own behaviors, to the extent possible. Nothing less offers her any chance of self-sufficiency and independence. Certain of the Student's needs, specifically behavioral, would be better-served at CCS. The Student is very close to her mother and father. Her home environment is supportive. Individuals with agensis frequently have difficulty adjusting to change and need a consistent environment. Agensis creates a difficulty in generalizing information. Habits acquired at CCS may not translate into the home environment. The LRE requirements of Article 7 and the Individuals with Disabilities Education Act (IDEA) require that, to the maximum extent possible, children with disabilities be educated with children who are not disabled. As a residential placement, CCS is a more restrictive placement. The evidence does not support a finding that the peer group at CCS would be any more in keeping with LRE than the STAGES peer group. A residential placement cannot be justified without clearer evidence that STAGES or other less restrictive environments are inappropriate. The evidence does not support a conclusion that STAGES is an inappropriate placement.

The causal case conference of March 3, 1999, had inadequate information on the Student's agensis and other conditions. This deficit led to the no-cause finding. The no-cause finding led to the Article 7 due process hearing request. The June 8, 1999, CCC was better informed but did not know of the Student's worsening white matter loss and worsening thought disorder. The CCC had discretion to exclude the court reporter as the presence of the court reporter was hindering the process of the CCC.

The Student did not regress academically over the summer vacation. However, ESY services could have helped the Student to stabilize further behaviorally and possibly advance behaviorally, an aspect of her IEP, even if she had simply participated in a three-student classroom experience at STAGES.

In order for this Student to receive greater benefit from her education, her classification should be modified. The Student's primary disability should continue to be OHI, with a secondary disability of EH. Eligibility is a result of the agensis, the deficit of white matter, and the disordered thought processes.

The parents sought legal advice and also engaged Dr. Courtney and Dr. Shuman for opinions and testimony because of the error made by the March 3, 1999, CCC. Their participation in the Article 7 process was necessary to help inform the school regarding the Student's condition and the

worsening of that condition. The costs of Dr. Courtney and Dr. Shuman through the last day of hearing on January 12, 2000, should be borne by the school; however, no costs for psychotherapy should be paid.

The cost of the IEE done by CRG was at the order of the IHO. The parents had expenses connected with the trips to CRG in Indianapolis. These expenses should be borne by the school. The cost of Dr. Shear's participation in the March 3, 1999, causal conference and June 8, 1999, CCC should be paid by the school, as his presence on March 3 was necessitated by the lack of decision in the February 22 meeting and his participation on June 8 was necessitated by the CCC's error in the no-cause finding.

Based upon the foregoing findings, the IHO entered the following eleven conclusions of law and seven orders:

IHO's Conclusions of Law

1. This case presents a record that is uniquely conflicted, conflict created by the testimony of highly-qualified specialists with very different opinions.
2. The Student continues to present as a danger to herself and others. Placement in the self-contained classrooms at the high school is not appropriate at this time.
3. The record on balance supports a conclusion that STAGES is an appropriate placement, despite the lack of girls in the peer group. Appropriate opportunity for interaction with other girls has been and can be offered.
4. The record contains considerable evidence that CCS offers a specialized program which could benefit the Student, if used for a limited time period. However, the evidence before the IHO does not support a conclusion that STAGES is an inappropriate placement.
5. STAGES personnel are not well-versed specifically in callosal agenesis and the other aspects of the Student's medical condition. An in-servicing of STAGES personnel would help address that deficit. The parents must be given effective input in choosing the in-service providers.
6. The parties must have a facilitator in the middle of their communications and their decision-making. Such a person should be located and possibly funded through the efforts of the Community Resource Coordinator. The facilitator must be chosen by both parties.
7. The IHO finds no technical violations regarding:
 - fall semester 1998 English;
 - the process of the Schwarz evaluation;
 - substitute teacher not advised to watch for problems between the Student and the other student;
 - failure to allow the court reporter in the CCC;
 - the Procedural Rights Handbook;

- alleged mishandling by the school of the Student's behaviors in fall 1998 under the Behavior Intervention Plan in effect;
 - assignment of case managers or recording of case conference notes;
 - Comprehensive System of Personnel Development;
 - Interagency Memorandum of Agreement;
 - Procedural Safeguards Notice;
 - responses to information requests;
 - or any other complaint issue raised but not specifically addressed here.
8. The IHO finds the following technical violations (complaint):
- days out of school rule was violated; suspension days totaled 13.5 and Article 7 allows only ten; see also denial of FAPE below.
 - CCC outcome: the no-cause finding of the March 13, 1999 CCC was in error. The error was corrected when the June 1999 CCC learned more regarding aegnesis and changed that finding to one of causal relationship between the February 16, 1999, misbehavior and the Student's disability. This issue is now moot.
9. The statement of other issues and rulings:
- a) Whether the recommended placement is consistent with the Least Restrictive Environment. The IHO rules that the recommended placement at STAGES is consistent with LRE.
 - b) Whether the IEP and recommended placement have been properly determined and are appropriate under Article 7. The IEP should be amended as follows:
 - 1) to delete reference to ADD and change classification to primarily OHI and secondarily EH.
 - 2) the Student should have been afforded ESY services.

The IEP is otherwise adopted as written. STAGES was and is an appropriate placement, on the record at the moment of decision.
 - c) Whether respondents have failed to provide a Free and Appropriate Public Education:
 - 1) in the Student's first semester English class. No violation of FAPE has occurred.
 - 2) in the alleged exclusion of the Student from the high school in the Stay-Put placement. No violation has occurred.
 - 3) in the alleged violation of the maximum number of suspension days limit, 511 IAC 7-15-1(b). A denial of FAPE has occurred, as the Student was suspended out-of-school for 13.5 days and the maximum allowable is ten days.
 - d) Whether respondent's evaluation procedures were appropriate. No violation of FAPE has occurred.
 - e) Whether the Student was eligible for Extended School Year services or is now eligible for compensatory education. The Student was eligible for ESY, a violation of FAPE has occurred, and ESY shall be provided in summer 2000.
 - f) Whether the Student's eligibility category must be changed. The Student should be reclassified as primary disability, Other Health Impaired; secondary disability, Emotional Handicap.
10. The no-cause finding had the following impacts: it led to Dr. Shears' attendance at the March 3 and June 8 meetings, triggered the Article 7 due process request, occasioned the Courtney IEE, and led to petitioners' hiring of experts and attorney. The IEE by the CRG was ordered by the IHO.

Those costs through the last day of hearing, January 12, 2000, should be borne by respondents, except that costs for psychotherapy should not be respondents' obligation. The IHO has no jurisdiction over attorneys' fees.

11. Any Conclusion of Law which should be deemed a Finding of Fact may be so modified.

IHO's Orders

1. Respondents are ordered to cease and desist from committing the technical violations set out above.
2. A facilitator and funding for that person shall be located as quickly as possible through the assistance of the Community Resource Coordinator. Appeal of this decision shall not thwart that process. The facilitator shall participate as needed in all aspects of communication among the parents, respondent personnel and medical, psychiatric and psychological providers, including CCC processes. Either party may invoke the participation of the facilitator in communication processes.
3. Respondents through the facilitator shall be given access to information from the Student's medical, psychiatric, and psychological providers for information regarding medications and any other information impacting the provision of educational services. Similarly, respondents through the facilitator shall provide timely information to petitioners and to the Student's medical, psychiatric, and psychological providers regarding the Student's behaviors at school which might impact the provision of medical, psychiatric or psychological services.
4. The Student shall remain at STAGES through the end of SY 1999-2000, and thereafter until the CCC agrees otherwise.
5. The Student shall be provided ESY services during summer 2000. The CCC shall consider whether CCS would be an appropriate placement for summer 2000, on the basis of the information available to this date and other reports not yet generated at the date of this award (e.g., University of Chicago). The facilitator shall be used in this process as needed.
6. An in-service of STAGES staff regarding agensis and the other aspects of the Student's disability shall be provided by respondents. Petitioners shall have effective input into who is invited to participate in providing the in-service training. The facilitator shall be used in this process as needed.
7. Respondents shall pay the expenses of the Article 7 process, including Dr. Shear's charges for March 3 and June 8, 1999; Dr. Steck, Ms. Lindhjem, and Dr. Horn's charges (see billings enclosed to respondents); petitioners' travel mileage, hotel (if any) and food for the visits to the Children's Resource Group (upon presentation of adequate documentation: receipts and statement of mileage); expenses of the IEE done by Dr. Courtney, and his testimony and time spent in

preparation for testimony through January 12, 2000, the last day of hearing; however, respondents are not liable for psychotherapy charges; Dr. Shuman's time spent on the case through January 12, 2000. Dr. Shuman and Dr. Courtney are directed to present summary invoices to counsel for respondent for this purpose. Petitioners' attorney's fees are not within the hearing officer's jurisdiction and may be sought by petition to a court of competent jurisdiction.

PROCEDURAL HISTORY OF THE APPEAL

On March 30, 2000, the school timely requested an extension of time in which to file its petition for review. The Board of Special Education Appeals (BSEA) granted this request on March 31, 2000. The parents timely requested an extension of time in which to file their petition for review on April 5, 2000. Their request was granted by the BSEA on April 6, 2000. The extensions of time required each party to file the petition for review by May 1, 2000. Both the school and the parents timely filed petitions for review on May 1, 2000. The parties were initially notified that the BSEA would conduct its impartial review, without oral argument, on May 25, 2000. A corrected notice informed the parties the BSEA would conduct its impartial review on May 26, 2000. Each party timely filed its reply on May 11, 2000. In its reply, the school requested oral argument. The BSEA denied the request for oral argument by order dated May 16, 2000.

School's Petition for Review

In its Petition for Review, the school has raised objections to the following findings of fact, conclusions of law, and orders: FFs # 9,¹ # 19, # 26, # 28, # 29, # 30, # 43, # 4,² # 46, # 59, # 62, # 68, # 88, # 89, # 94, # 95, and # 96; and CLs # 7, # 8, # 9(b)(2), and # 10; and orders # 5 and # 7. The school generally argues the facts cited are not supported by the evidence, and the conclusions are contrary to law. The school presents its argument in three major areas, as follows:

A. Because the IHO determined the school's evaluation to be appropriate, the school maintains the request for reimbursement for the IEE must be denied as a matter of law. The school notes that after the Student's behavior of attacking another student, it sought an additional evaluation to assist the CCC in making the causal determination. The parents refused consent for this evaluation, which led the CCC to determine the behavior was not related to the disability. The school was not able to conduct the psychiatric evaluation until the IHO granted its request to do so. With this new evaluative material, the CCC then determined the Student's behavior was a manifestation of her disability. Reimbursement for IEE cannot be awarded to parents except when the school's evaluation is determined to be inappropriate. There is no legal basis for awarding reimbursement for the IEEs because it was the lack of consent by the parents which precluded the CCC from being fully informed of the Student's disability. This lack of full information led to the determination there was no causal

¹Finding of Fact # 9 was specified in the petition for review, but this appears to be a typographical error. The objection appears to be directed to FF # 91.

²Finding of Fact # 4 was specified in the petition for review, but this appears to be a typographical error. The objection appears to be directed to FF # 44.

relationship. The school also maintains the IHO's order seeking additional IEEs after the close of the evidence exceeded her authority. The IHO's decision to reopen the evidence and to add issues exceeded her authority. The IHO further exceeded her authority in admitting evidence offered through correspondence after the close of evidence. These procedures denied the parties' their right to cross-examine and was a denial of due process. The IHO further erred in awarding reimbursement for the involvement of a psychologist who neither evaluated the Student nor testified at the hearing.

B. The IHO's findings and conclusions concerning ESY services are contrary to the established legal standard and have no basis in law. The findings show the Student did not regress academically over the summer vacation, and the evidence would support a finding the Student did not regress behaviorally over the summer; thus there is no basis for concluding the school should provide ESY services to "stabilize" or "advance" her behavioral performance.

C. Because the school provided the Student with an opportunity to receive educational services during the suspension period, no violation occurred from the lack of educational services during the suspension period. The school offered services to the Student to ensure there was no interruption of services, but the parents refused such services.

In conclusion, the school requests the BSEA to reverse the IHO's orders with respect to the school's obligation to reimburse for the IEE, to provide ESY services, and the violation of the days of suspension without educational services and to make findings and conclusions consistent with the school's arguments.

Parents' Petition for Review

The parents' petition for review addressed issue areas rather than citing to specific findings, conclusions or orders to which exception were taken as is required by 511 IAC 7-15-6(e)(3). The petition appeared to object to findings of fact and conclusions of law: FFs # 1-13, # 16, # 21, # 26, # 33, # 44, # 49, # 50, # 52, # 54, # 60, # 61, # 62, # 66, # 71, # 72, # 73, # 74, # 75, # 81 and # 89; and CLs # 8, # 9(c)(1); # 9(c)(3). The parents address the following issues:

1. Disability: The Student has been identified as eligible for special education as a student with an other health impairment (OHI). The proper classification should be emotionally disturbed as defined in 34 CFR § 300.7(c)(4).

2. Valparaiso High School: The IHO erred in presenting the Student in a negative light to justify the shoddy treatment of the Student by the school. The Student was benefitting educationally and socially from her experience at the high school. The problems related in her disciplinary record were primarily as a result of the inability of her English teachers to provide her with a classroom experience consistent with her needs. The cigar cutter incident occurred during math class on a day when there was a substitute teacher. The lesson plans did not include any special instructions pertaining to the ongoing tension between the Student and the other student.

3. School's actions subsequent to incident: The Student was suspended and a causal case

conference was scheduled for February 22, 1999. At that case conference, the parents were informed the meeting would be a case conference, as the school felt it needed more information before it could schedule a causal conference. The school wanted to conduct a psychiatric evaluation and proposed to provide homebound instruction in the meantime. The parents were concerned the proposed psychiatric evaluation did not include a neurological component, and didn't believe homebound instruction was appropriate.

4. Stay-put placement: The parents have consistently requested the Student be returned to her "stay-put" placement at Valparaiso High School. This was the placement the Student was in before the incident. While this matter was pending, the IHO ordered continued placement at STAGES without written findings of fact and law as required by 20 USC § 1415(h)(4).

5. Second causal case conference: A second causal case conference committee meeting was held on March 3, 1999. The school barred the transcription of the proceedings by the court reporter whom the parents brought to the meeting. This is a violation of 20 USC § 1415(h)(3) which provides parents the right to a written, or at the option of the parents, electronic verbatim record of such a hearing. After barring the attendance of the court reporter, the case conference committee conducted its manifestation review, but considered material in reverse order, determining there was no causal relationship before reviewing the Student's current placement, IEP and current educational evaluation data. The CCC recommended placement at STAGES as an interim alternative educational placement. Contrary to the IHO's findings, the Student was without educational services until March 11, 2000.

6. Summary of Student's disability as it relates to her behavior: The CCC appears to lack an understanding that the Student lacks some of the filters that temper other people's reactions to their environment. The Student is unable to be the party responsible for de-escalation. The Student's behavior could be modulated if instead of yelling at her and trying to discipline her, school officials just talked quietly to her and gave her a hug, leaving her with only socially acceptable reactions to mirror.

7. Negligent evaluation procedures: At the February 22, 1999, CCC, the school pressed its demand for a psychiatric evaluation. The Student's parents refused consent to the school's evaluation without assurance it would include a neuro-psychiatric component. When the school changed its recommendation to an evaluation by Dr. Marvin Schwarz, the parents consented upon the written stipulation he would confer with Dr. Courtney, who was conducting an independent neuro-psychological evaluation. The parents later withdrew their written consent to Dr. Schwarz's evaluation. The IHO then authorized the school to utilize the services of Dr. Schwarz over the parents' objections. This evaluation was conducted without parents' informed consent as required by 20 USC § 1414(c)(3) and 34 CFR § 300.505(a)(i). The school failed to give the parents or Student notice of when the evaluation would be conducted, refused to permit the parents to observe the evaluation, and failed to record the evaluation as they said they would.

8. STAGES discipline: The STAGES program is based upon a disciplinary behavior modification model which is not compatible with the Student's needs. The STAGES staff took it upon themselves to artificially create situations designed to put the Student under stress.

9. June 8, 1999 Case Conference: This CCC determined the Student's behavior was a manifestation of her disability. The start of this CCC was delayed by the absence of school personnel and the school's attorney, then over two hours were wasted in reading the evaluations. After the parents' representatives had to leave, the CCC recommended continued placement at STAGES. The CCC ignored the requirements of LRE, and was not properly conducted or constituted, as the general education teacher left early. The CCC failed to provide for ESY services.

10. Excessive suspensions and FAPE: During the course of the school year, the Student was suspended for 20 ½ days. The school has violated state and federal law and denied the Student a FAPE.

11. Center for Comprehensive Studies at Carbondale, Illinois: Dr. Courtney has recommended placement at CCS or a similar institution. The parents requested the IHO recommend that the Student is in need of more intensive services that she is currently receiving or the school is capable of developing. The parents believe the appropriate placement for the Student is at Valparaiso High School where she was benefitting educationally.

12. Testing ordered by IHO: The parents comment on the testing ordered by the IHO, as well as statements by other evaluators. However, there does not appear to be any particular objection being made that pertains to the IHO's decision.

In conclusion, the parents note that while the Student could succeed at Valparaiso High School if the staff were properly trained and if the Student were protected from further experimentation, it is time to provide her the life-long skills that are only available at CCS.

For remedy, the parents request:

1. Placement at CCS, or in the alternative, Valparaiso High School.
2. Stay-put placement.
3. Reimbursement of parents' attorney fees and psychologists' fees incurred for the first causal conference.
4. Implementation of strategies suggested by the parents to address the Student's frustrations.
5. To remedy the complaint issues, require the school to:
 - provide all parents with requested information in a timely manner, whether the request is written or verbal;
 - be required to disclose all available options to parents in a timely manner;
 - allow parents to record CCC and causal CCC in whatever manner they choose, including a court reporter at the expense of the LEA, if requested;
 - to provide case managers knowledgeable about the special needs of the students that they are responsible for;
 - to be sure lesson plans note any potential problems between students as well as the strategies for addressing those problems;
 - to report in full any information provided by parents at case conferences;
 - to provide an evening or Saturday workshop for all parents of special needs children near the

- beginning of each school semester at which a third party presenter who is not an employee of the LEA instructs parents on their rights under applicable laws and provides instructional material;
- to support the establishment of a special needs PTA for those schools served by the LEA to give parents of special needs children an opportunity to meet each other and discuss topics of mutual concern.
 - to report promptly all alleged disciplinary exclusions to the Indiana Department of Education, Division of Special Education so that any instances of students being denied FAPE can be monitored and dealt with immediately.
6. Require modifications of the existing Interagency Memorandum of Agreement pursuant to 511 IAC 7-4-2 to incorporate additional safeguards to prevent future abuses of students and parents.
 7. Modify the existing Interlocal Agreement adopted pursuant to 511 IAC 7-4-3 and IC 36-1-7 *et seq.*, to include a parent of a disabled child from each school corporation participating in the governing body of the interlocal.
 8. Require modification of the comprehensive system of personnel development in place pursuant to 511 IAC 7-5-3 to include training in:
 - proper classification of students with disabilities;
 - conduct of causal hearings;
 - determination of when it is appropriate to change IEP and/or placement;
 - delivery of FAPE in LRE;
 - recognition of when disciplinary complaints are a result of staff implementation rather than an inadequate plan.
 9. Modification of written procedures for participation in and consultation with parents of students in special education and other community members pursuant to 511 IAC 7-6-1.
 10. Reimbursement of parents' costs incurred for the IEE with Dr. Courtney, court reporter fees of \$105.00, Dr. Shuman's fees, and reasonable attorney fees including fees for consultants employed to advise attorney on due process matters.
 11. Move control of the appointment and oversight of IHOs from the Indiana Department of Education to the Office of the Indiana Attorney General or some other suitably disinterested state agency.

Parent's Response to School's Petition for Review

In responding to the school's petition for review, the parents address the following general areas:

Identification: While the school identified the Student as being eligible for special education services as a student with an OHI early in her educational career, the school failed to provide services for her emotional disability despite being made aware of her emotional disability.

October 28, 1998 Case Conference: The school refused to acknowledge that almost all of the Student's discipline problems arose in the English classroom, giving rise to the reasonable conclusion that those teachers desperately needed to be inserviced and redirected.

November 30, 1998 Case Conference: The behavior intervention plan generated as a result of this

CCC was not properly and effectively implemented by the school.

February 16, 1999 Incident: The school lays all the blame for this incident at the Student's feet.

February 22, 1999 Case Conference: The recommendation for homebound instruction was not appropriate.

March 3, 1999 Case Conference "Reconvened:": The parents objected to any type of psychiatric or psychological evaluation that did not include a neurological component which addressed the issue of whether or not the Student's neurological deficiencies resulting from the agenesis of the corpus callosum impacted her misconduct.

Examination of the Student: The independent evaluation of the Student by Dr. Courtney began before the psychiatric evaluation conducted by Dr. Schwarz.

June 8, 1999 Case Conference: While the school asserts that this was the first time it became aware of the relationship between the misconduct and the disability, the school ignores the fact that Dr. Shear had provided information on this relationship at the prior case conferences.

Payment for Independent Evaluation: The parents understood that the IEE by Dr. Courtney was agreed to by the school so the parents could have the neurological component of the evaluation. The parents agreed to the evaluation with Dr. Schwarz with the understanding that Dr. Schwarz and Dr. Courtney would confer with one another. The IHO's decision to bring in additional evidence is clearly a response to the school's evaluation procedures. If the school had a valid objection to the IHO's decision to reopen the evidence, the time to raise timely objections would have been at the pre-hearing conferences and when the evidence was being received. Having failed to raise timely objections, the school has waived the right to object on appeal to the BSEA.

Dr. Shuman's Letter: The parents agree with the school that the Student's condition has not worsened. What has happened is that technology has evolved and allows us to better depict those physical deficits.

Dr. Shear's Testimony: The school misrepresents what Dr. Shear provided at the two case conferences he attended. As the Student's treating psychologist, it was his opinion that the Student's actions were a result of her disability. The parents are entitled to reimbursement for the expenses associated with Dr. Shear's attendance at the two CCC meetings because it was the school that changed the February 22, 1999, causal conference to a CCC after the parties had arrived, and the school ignored Dr. Shear's testimony on the relevant issue of causation at the causal conference held on March 3, 1999.

Extended School Year Services: The Student requires informed neuro-biologically astute and sophisticated teachers in an educational program which will enable the Student to accomplish as much as she can during the few years of development left to her.

The Suspension Violation: The Student was entitled to her stay-put placement. The school was warned

the maximum period of suspension had been exhausted and could have avoided the suspension violations. Homebound instruction was not appropriate, although the parents were told that was the only option. When homebound instruction was not accepted, the parents were told that STAGES was the only alternative placement, and if they didn't accept that, there would be no educational services.

In conclusion, the parents state that the school has misrepresented the facts and law concerning the parents' due process appeal.

School's Response to Parent's Petition for Review

In reply to the parent's petition for review, the school notes the parents failed to specify those findings of fact, conclusions and orders to which exception is made. The school responds to the issues raised. The school argues the IHO correctly applied the law concerning the stay-put requirement. The Student's placement at the time the request for a hearing was made was the STAGES program. The school did propose appropriate IEPs and placements at each CCC given the events and data known at the time. Proper procedures were followed, and the recommendations made were reasonable to confer educational benefit. Recommendation for ESY services must be based upon regression/recoupment. The school's psychiatric evaluation appropriately identified the Student's educational needs. The fact that the IHO believed that an IEE was necessary further supports the conclusion the school needed the benefit of additional evaluation data as recommended by the February and March, 2000, CCCs. The school provided the Student with a FAPE and did not utilize suspensions in such a manner as to constitute a change in placement. The IHO did not err in not including in-school suspensions in calculating the days of suspension. IDEA permits suspensions for no more than 10 consecutive school days provided that if the student is subject to a series of removals, the removals do not constitute a change of placement. Therefore, the school may exceed 10 days of suspension within a school year so long as each period of suspension does not exceed 10 days and such removals do not constitute a pattern of exclusion. Further, the school did offer education services during the suspension period.

The school points out that CCC meetings convened to determine causal relationships are not hearing procedures which need the services of a court reporter. The notes in Appendix A to Part 300-Notice of Interpretation, Question 21 indicate the public agency has the option to require, prohibit, limit or otherwise regulate the use of recording devices at IEP meetings. As the school had a legitimate concern that the presence of a court reporter would have a chilling effect, its decision to prohibit the presence of the court reporter was appropriate. Finally, the school points out the school was obligated to propose a behavior intervention plan and interim alternative educational placement upon the CCC's determination the Student's behavior was not related to her disability. The CCC concluded that due to the dangerousness of the misconduct, continued placement in the high school would not be appropriate to assist in reevaluating her disability. This placement was then agreed to by the parents. The diagnostic information later provided by Dr. Schwarz caused the CCC to recommend her continued placement in the STAGES program. The School requests the BSEA to deny the relief sought in the parents' petition for review.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

The Indiana Board of Special Education Appeals met on May 26, 2000, to conduct its review of the above-referenced matter without oral argument. All members were present and had reviewed the record, the Petition for Review and Reply. The Indiana Board of Special Education Appeals now finds as follows:

Combined Findings of Fact and Conclusions of Law

1. The Indiana Board of Special Education Appeals (BSEA) has jurisdiction in the matter pursuant to 511 IAC 7-15-6.
2. At the time of the hearing request, the Student was a ninth grade student identified as eligible for special education services as a student with an other health impairment (OHI).
3. The initial hearing request alleged a violation of the stay-put rules and error by the CCC in finding no causal relationship between the Student's disability and her behavior. Prior to the hearing in this matter, the case conference committee (CCC) determined that a causal relationship between the Student's misconduct and her disability did exist. The IHO clarified the issues for hearing to be:
 1. Whether the recommended placement is consistent with the Least Restrictive Environment (LRE).
 2. Whether the recommended placement and individualized education program (IEP) have been properly determined and are appropriate under Article 7.
 3. Whether respondents have failed to provide a Free and Appropriate Public Education (FAPE):
 1. in the Student's first semester English class;
 2. in the alleged exclusion of the Student from the high school in the Stay-Put placement;
 3. in the alleged violation of the maximum number of days limit, 511 IAC 7-15-1(b).
 4. Whether respondents' evaluation procedures were appropriate.
 5. Whether the Student was eligible for Extended School Year (ESY) services or is now eligible for compensatory education.
4. After scratching the neck of another student with a cigar cutter, the Student was suspended from school on February 16, 1999, with a recommendation for expulsion.
5. The CCC met on February 22, 1999, to determine whether the Student's behavior was a manifestation of her disability. The CCC determined it needed further evaluative information and sought parental consent to conduct a psychiatric evaluation. The school also offered to provide homebound instruction to the Student until the evaluation could be completed. The parents refused to give consent for the psychiatric evaluation and refused to provide consent for homebound instruction. When the parent refused consent for a needed evaluation, the school was obligated to pursue a due process hearing or mediation to obtain the necessary consent to conduct the evaluation (34 CFR § 300.505(b)).

This procedural error was corrected when the school requested an order from the IHO to conduct the evaluation.

6. At the parents' insistence, the CCC reconvened on March 3, 1999, to determine whether the Student's behavior was a manifestation of her disability. The CCC determined there was no causal relationship between the Student's behavior and her disability.

7. As a result of its determinations on March 3, 1999, the CCC determined the Student should be moved immediately to an interim alternative placement (IAEP). The IAEP was recommended because the Student "engaged in dangerous behavior with a weapon that resulted in injury to another student that was unrelated to her disability."

8. The parent did not give written consent for the IAEP until March 9, 1999.

9. Prior to the February 16, 1999, incident, the Student had been suspended out-of-school on November 24 and 25, 1998 and February 11, 1999. The Student was suspended for more than ten days during the school year with a cessation of education services.

10. Under 511 IAC 7-15-2(f)(3)(B), a student may be removed to any other placement provided for in the student's IEP if the parent agrees. If the parent does not agree, the school may pursue a court injunction or request a due process hearing and ask the IHO to determine the interim placement for the student. 511 IAC 7-15-2(g). In this case, the parents did not agree to the interim homebound services offered on February 22, 1999, nor to the IAEP offered on March 3, 1999, until after the Student had been without educational services in excess of ten instructional days during the school year. The school erred in not seeking either an injunction or requesting a hearing to determine the interim placement for the Student when the Student was without educational services in excess of 10 days. However, this error was corrected when the parents provided consent and the Student began receiving educational services at STAGES. There was no harm to the Student. This issue is now moot.

11. An IAEP is provided for pursuant to 34 CFR § 300.520. While the school labeled the placement offered on March 3, 1999, as an IAEP,³ the evidence and testimony show that neither the parties nor

³An IAEP is provided for pursuant to 34 CFR § 300.520. An IAEP is to be for the same amount of time that a student without a disability would be subject to discipline, but is not to exceed 45 days. If a parent requests a hearing regarding the disciplinary action, the student must remain in the IAEP pending the decision or until the expiration of the 45 days. If the school maintains that it is dangerous for the student to be in the current placement during the pendency of the due process proceedings, the school may request an expedited hearing. The IHO then determines whether the IAEP or another placement is appropriate, applying the standards of 34 CFR § 300.521. The placement by the IHO may not be longer than 45 days. However, this procedure may be repeated as necessary. 34 CFR § 300.526.

While the school labeled the Student's placement as an IAEP, it does not appear that either party nor the IHO viewed this as an IAEP pursuant to 34 CFR § 300.520. No request was made for an expedited due process hearing. While the parents argued for a return to the Student's previous

the IHO considered the placement to be an IAEP as contemplated by 34 CFR § 300.520. The IEP developed on March 3, 1999, contained a service plan for March 4, 1999, through October 31, 1999. The evidence and testimony support the determination the placement was an interim placement pursuant to 511 IAC 7-15-2(f)(3). While the parents continued to make arguments for a stay-put placement, the parents failed to raise any claim of a violation of the procedures of 34 CFR § 300.526. Any such claim is waived. Further, during the course of the proceedings, the IHO ordered continued placement at STAGES.

12. Attorney fees and costs are within the jurisdiction of a court and not within the jurisdiction of an IHO or the BSEA. 34 CFR § 300.513; 511 IAC 7-15-6(q). The IHO's determinations that the school is responsible for the costs of the parents' experts and witnesses in attending CCCs, or for consultation, preparation or testimony in the due process hearing, are contrary to law.

13. A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school, and the school's evaluation is not appropriate. If the school's evaluation is appropriate, the parent may still obtain an IEE, but at the parent's expense. 511 IAC 7-10-3(j) & (k).

14. The school's evaluation was determined to be appropriate. The IHO's determinations that the school should reimburse the parents for IEEs obtained by the parents are contrary to law.

15. The costs of the IEE ordered by the IHO are the responsibility of the school. 511 IAC 7-10-3(m).

16. The Student's placement in the STAGES program is an appropriate placement in the LRE.

17. The IHO has an obligation to make a determination as to the appropriate placement for the Student. When the evidence and testimony fail to provide the IHO sufficient information, the IHO acts within her discretion in requesting additional information. The IHO did not err in reopening the evidence to obtain the necessary evidence to make an informed decision.

All votes by the BSEA regarding the above were voice votes and were unanimous.

Orders of the Indiana Board of Special Education Appeals

In consideration of the above Combined Findings of Fact and Conclusions of Law, the Indiana Board of Special Education Appeals now holds:

1. The IHO's Findings of Fact Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 21, 26, 28, 29, 30, 33, 43, 44, 46, 49, 50, 52, 54, 59, 60, 61, 62, 66, 68, 71, 72, 73, 74, 75, 81, 88, 89, 91, 92 and 95 are upheld as written.

placement in the high school, the parents did not make the claim that the IAEP was only for 45 days pursuant to 34 CFR § 300.520, nor that a continuation in this placement required the IHO to make the determinations pursuant to 34 CFR § 300.521 and 34 CFR § 300.526.

2. Finding of Fact No. 3 is amended only to the extent of changing “destructibility” to “distractibility”⁴ in the second to the last sentence in the first paragraph.
3. Findings of Fact Nos. 94 and 96 are struck as being contrary to law, as they conclude the school should be responsible for the costs of the parents’ expert witnesses for their opinions and participation in CCC meetings and testimony during the due process hearing.
4. The IHO’s Findings of Fact are renumbered accordingly.
5. The IHO’s Conclusions of Law Nos. 7, 8, 9(b)(2), 9(c)(1), and 9(c)(3) are upheld as written.
6. The IHO’s Conclusion of Law No. 10 is struck and replaced with the following:

The IEE by the CRG was ordered by the IHO. That cost should be borne by the school. Because the school’s evaluation was appropriate, the school is not responsible for further evaluations obtained by the parents. The IHO has no jurisdiction over attorney’s fees.

7. The IHO’s Order No. 5 is upheld as written.
8. The IHO’s Order No. 7 is amended to read as follows:

The school shall pay the expenses of the Article 7 process, including charges for Dr. Steck, Ms. Lindhjem, and Dr. Horn (see billings enclosed to respondents); the parents’ travel mileage, hotel (if any) and food for the visits to the Children’s Resource Group (upon presentation of adequate documentation: receipts and statement of mileage). The school is not liable for psychotherapy charges. The parents’ attorney’s fees are not within the hearing officer’s jurisdiction and may be sought by petition to a court of competent jurisdiction.

9. Any Findings of Fact, Conclusions of Law, or Orders of the IHO not specifically addressed above are upheld as written.

All other Motions or objections not specifically addressed herein are hereby deemed denied.

Date: May 31, 2000

/s/ Richard L. Therrien
Richard L. Therrien, Chair
Board of Special Education Appeals

⁴There is no intent herein to change the IHO’s finding. Rather, the BSEA believes this to be a typographical error. Distractibility, rather than destructibility, is supported by the evidence.

Appeal Right

Any party aggrieved by the written decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to request judicial appeal from a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-15-6(p).